

**STATE OF DELAWARE**

**PUBLIC EMPLOYMENT RELATIONS BOARD**

WILMINGTON FRATERNAL ORDER OF	)	
POLICE, LODGE NO. 1	)	
	)	
	)	
Charging Party	)	
	)	
	)	
v.	)	
	)	<u>ULP NO. 03-10-408</u>
	)	
CITY OF WILMINGTON	)	
	)	
Respondent.	)	

**ORDER OF DISMISSAL**

1. WILMINGTON FRATERNAL ORDER OF POLICE, LODGE NO. 1, (“FOP Lodge No. 1”) is an employee organization within the meaning of 16 Del. C. Section 1602(g)<sup>1</sup>, of the Police Officers’ and Firefighters’ Employment Relations Act, and the exclusive bargaining representative<sup>2</sup> within the meaning of 19 Del.C. Section 1602(h), of certain employees, namely, Captains and Inspectors, employed by the City of Wilmington (“CITY” or “Respondent”).

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<sup>1</sup> (g) “Employee organization” means any organization which admits to membership police officers or firefighters employed by a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of such organization.

<sup>2</sup> (h) “Exclusive bargaining representative” or “exclusive representative” means the employee organization which as a result of certification by the Board has the right and responsibility to be collective bargaining agent of all employees in that bargaining unit.

2. CITY OF WILMINGTON is a public employer within the meaning of the Public Employment Relations Act, 19 Del. C. Section 1602(l)<sup>3</sup>.
3. On October 15, 2003, FOP Lodge No. 1 filed an Unfair Labor Practice Charge, alleging the City violated 19 Del. C. Section 1607 (a)(5) and (a)(6), by failing to pay Performance Incentive Plan (“PIP”) compensation as provided for in Section 9.4 of the Collective Bargaining Agreement between FOP Lodge No. 1 and the City.
4. On or about October 20, 2003, the City filed its Answer to the Unfair Labor Practice Charge and New Matter, denying all material allegations of the Charge, and requesting the Public Employment Relations Board (“PERB”) enter an order dismissing FOP Lodge No. 1’s complaint and awarding the City counsel fees and costs incurred in connection with defending the charge.
5. On or about October 29, 2004, FOP Lodge No. 1 filed its Response to New Matter.
6. On December 1, 2003, the PERB issued a Probable Cause Determination stating that a hearing would be conducted to provide an opportunity to create an evidentiary record.
7. On December 18, 2003, the City filed a Motion to Stay the Unfair Labor Practice Hearing.
8. On December 29, 2003, FOP Lodge No. 1 filed its Response in Opposition to the City’s Motion to Stay.

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<sup>3</sup> (l) “Public employer” or “employer” means the State, any county, of the State or any agency thereof, and/or any municipal corporation, municipality, city or town located within the State or any agency thereof, which upon the affirmative legislative act of its common council or other governing body has elected to come within the former Chapter 13 of this title or which hereafter elects to come within this chapter, or which employs 100 or more full-time employees.

9. In a decision dated December 31, 2003, the PERB denied the City's Motion to Stay the Hearing citing that "staying the hearing pending other decisions which would not resolve the basic issue raised by the charge would serve no useful purpose."
10. A hearing was held on multiple dates: January 9, January 15, and January 21, 2004.
11. On January 14, 2004, prior to the second hearing day, the City filed a Motion to Dismiss the Unfair Labor practice charge.
12. At the hearing on January 15, 2004, the City's Motion to Dismiss the Unfair Labor Practice charge was heard and dismissed.
13. Simultaneous Post-Hearing Opening briefs were filed by FOP Lodge No. 1 and the City on April 7, 2004, and simultaneous responsive briefs were filed on April 20, 2004.
14. PERB's decision was issued on June 8, 2004.
15. FOP Lodge No. 1 filed a Request for Review of the Hearing Officer's decision on June 15, 2004.
16. On June 24, 2004, the City filed written support for the Hearing Officer's decision and requested the Hearing Officer's decision be affirmed by the Board.
17. On July 7, 2004, FOP Lodge No. 1 filed a Request for Oral Argument and rescheduling of the July 21, 2004 review date.
18. The matter was rescheduled and heard by the Board on August 18, 2004.
19. Subsequent to the August 18, 2004 hearing, the Board received post-hearing submissions from the parties. Therefore, a meeting between the parties and the

Board was scheduled for August 31, 2004, to determine how the Board should proceed with the submissions.

20. Following the August 31, 2004 meeting, and before the unfair labor practice decision was formally issued by the PERB, the parties continued to negotiate over the terms of a collective bargaining agreement.
21. The successful completion of collective bargaining negotiation included a resolution of the pending unfair labor practice and the parties jointly filed a motion to have the unfair labor practice dismissed without a formal decision being issued.

**WHEREFORE**, this Charge is hereby dismissed with prejudice.

**IT IS SO ORDERED.**

/s/Elizabeth Daniello Maron  
Elizabeth Daniello Maron, Esquire

/s/R. Robert Currie  
R. Robert Currie

/s/Kathi A. Karsnitz  
Kathi A. Karsnitz, Esquire

**DATED:** November 17, 2004